IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2006

CORAM:

THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

C.R.P. (NPD) No.972 of 2003

Sigrid Agarwal .. Petitioner

versus

M/s.Anjappar Chettinad Restaurant
rep. by its Partner
Mr.A.Kandasamy
JP Towers, Ground Floor
No.7/2, Nungambakkam High Road
Chennai-600 034. .. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 22.1.2003 rejecting the unnumbered E.P.No. Of 2002 in I.A.No.20612 of 2001 in O.S.No.6980 of 2001 on the file of the XVI Assistant City Civil Court, Madras.

For petitioner : Mr.P.B.Balaji
For respondent : No appearance

ORDER

This Petition is filed under Article 227 of the Constitution of India against the order dated 22.1.2003 rejecting the unnumbered execution petition of 2002 in I.A. No.20612 of 2001 in O.S. No.6980 of 2001 on the file of XVI Asst City Civil Court, Madras. The petitioner herein is the plaintiff in the suit.

2. It is seen that pending consideration of the suit, the petitioner herein prayed for an interim injunction restraining the defendant in any manner interfering the peaceful possession and enjoyment of the common area an also access to the exclusive car park of the petitioner. By order 6.12.2001, the Court below,

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satisfied of the prima facie case and the balance of convenience in favour of the petitioner, granted an interim injunction by order dated 20.12.2001 and directed compliance of Order 29 Rule 3, C.P.C.

3. Subsequently, the interim order granted originally was made absolute by order dated 6.6.2002. The petitioner preferred an Execution Petition for the execution of the injunction order obtained, invoking the provisions of Section 36, C.P.C., read with Order XXI Rule 32, C.P.C. and prayed for issuance of warrant for arrest of the Partner in the defendant / judgment debtor firm.

4. By order dated 22.1.2003, the Court below, without even numbering the petition, rejected the same on the view that the petitioner should invoke the provisions in Order XXXIX Rule 2A; hence, considered this petition as unsustainable and thus rejected and returned the papers.

5. It is seen from the paper book filed that when the Execution Petition was preferred, the same was returned to explain the maintainability of the petition. However, the petition was re-presented with an endorsement that the order of interim injunction granted is an executable one like a decree and hence, maintainable as provided for under Section 36 of C.P.C. The petitioner also placed reliance on the decision of the Andhra Pradesh High Court in AIR 1961 A.P. 482 in the case of ABDUL RAJACK Vs. ABDUL LATHEEF and contended that Order XXI Rule 32(1), C.P.C. applied to such a case. However, without considering the above-said decision, the petition was rejected on the view that the petitioner should take recourse to Order XXXIX rule 2A when the order to be executed was one passed under Order XXXIX Rule 1 and 2.

6. Aggrieved of this view of the Court below, the petitioner has preferred this civil revision petition. The learned counsel brought to my attention the decision of the Supreme Court reported in AIR 1966 SC 470 in the case of MANIKAYALA RAO Vs. NARASIMHASWAMI wherein, at paragraph 12, it is categorically held that under Section 36 of Code, the provisions relating to the execution of the decrees are applicable to execution of orders too. Learned counsel also referred to the decision of the Andhra Pradesh High Court reported in AIR 1961 A.P. 482 in the case of ABDUL RAJACK Vs. ABDUL LATHEEF rendered following the judgment of this Court in AIR 1950 Madras 237 (CHINNABBA CHETTY Vs. CHENGALROYA CHETTY) to impress on the fact that the invoking of the Court's jurisdiction under Order XXI Rule 32, C.P.C. is enforceable and hence, the order of the Court below suffered from an error apparent on the face of the record. In the context of the above-said provisions, the petitioner's counsel submitted that the view of the Court below was wrong.

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7. The learned counsel further referred to the provisions contained in Order XXI Rule 32, C.P.C. and Order 31 Rule 3A, C.P.C., to contend that the decree holder has a choice to take recourse either under Order XXI Rule 32, C.P.C. or under Order XXXIX Rule 3A, C.P.C. He submitted that while under Order XXI Rule 32, C.P.C., consequences are civil in nature, the consequences under Order XXXIX Rule 3A, C.P.C. are punitive. In these circumstances, the petitioner prayed for setting aside the order and to direct the Court below to proceed further with the petition filed.

8. I have gone through the decision of the Supreme Court in AIR 1966 SC 470 the case of MANIKAYALA RAO Vs. NARASIMHASWAMI.

9. Rejecting a similar contention that Section 36, C.P.C. applied only to a case of a decree and not to an order, the Supreme Court, in categorical terms, held that the provisions of Section 36, C.P.C. could not be restricted to a case of execution of decrees alone but are equally applicable to execution of orders. It cannot be denied that after serving the notice and giving opportunity the parties to file counter affidavit, the order was passed finally, making the interim order absolute, ex parte. In the light of the view taken by the Supreme Court, the objection by the Court below that it is not an executable one under Section 36, C.P.C. is not correct.

10. As regards the objection that the order of injunction was made under Order XXXIX Rule 1 and 2, C.P.C.; hence, in the event of a violation, the petitioners have to resort to Order XXXIX Rule 2A, C.P.C., a perusal of the provisions contained in Order XXXIX Rule 2A, C.P.C. shows that it gives the consequence of disobedience or breach of an injunction. It states that in a case of disobedience of an order made under XXXIX Rule 1 or Rule 2, C.P.C. for breach of any of the terms on which the injunction was granted, the Court granting the injunction or making the order, may order the property of the person guilty to be attached and also order such person to be detained in civil prison for a term not exceeding three months. Sub Rule (2) states that the attachment made shall remain in force for not more than one year, and at the end of which time if the disobedience continued, the property may be sold and out of the proceeds, award such compensation as the Court thinks fit, to the injured party and pay the balance to the party entitled thereto.

11. The provisions contained in Order XXI relate to execution of decrees and orders Order XXI Rule 32, C.P.C. states that where the party against whom a decree for an injunction has been passed and had an opportunity of obeying the decree but has willfully

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failed to obey it, the decree may be enforced by his detention in civil prison or by attachment of the property or both. Under Sub Rule (3) where the judgment debtor has not obeyed the decree and the attachment has remained in force for six months and the decree holder has applied to have the attached property sold, such property may be sold to compensate the decree holder to the extent the Court thinks fit. The provisions contained in Order XXI Rule 32 is a very comprehensive provision wherein the wilful disobedience has to be proved to order an attachment or a detention in civil prison or both. Considering the scope of both these provisions, the conclusion is that the choice of a decree holder having an injunction under Order XXXIX Rule 1 and 2, C.P.C. is not perforce restricted to the provisions contained in Rule 2A alone thus closing the door for invoking the provisions in Order XXI Rule 32. While the breach of an injunction granted under Order XXXIX Rule 1, C.P.C. is punishable under Order XXXIX Rule 2A, C.P.C., Order XXI Rule 32 with Section 36 is not meant for empowering the Court to just punish but for enforcing an order which is treated on par with a decree obtained in a suit. The resort to order XXI has to be read in conjunction with Section 36, C.P.C. The executing Court has a right to see that the contravention was wilful to order an attachment or an arrest or for detention in a civil prison or both as per Order XXI Rule 32. The choice of seeking a remedy under either one of these provisions, is purely within the domain of the decree holder and could not be faulted with by the executing Court. The decision reported in AIR 1961 AP 482 in the case of ABDUL RAJACK Vs. ABDUL LATHEEF following the decision of this Court in AIR 1950 Madras 237 (CHINNABBA CHETTY Vs. CHENGALROYA CHETTY).

12. It may be noted that the said decision held order XXI Rule 32, C.P.C. was intended to cover only mandatory injunctions and did not apply to prohibitory injunctions, preventing interference by defendants to the plaintiff's right by Act 22 of 2002. With effect from 1.7.2002, an explanation was added to sub section (5) to declare that the expression "the act required to be done covered prohibitory as well as mandatory injunction". In the light of a decision of this Court referred to above and in the context of the Supreme Court decision, AIR 1966 SC 470 in the case of MANIKAYALA RAO Vs. NARASIMHASWAMI, I have no hesitation in accepting the stand of the petitioner.

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In the circumstances, the civil revision petition is allowed thereby directing the executing Court to take up the petition filed for dealing with in accordance with law. There will be no order as to costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

ksv

To:

1. The Registrar
City Civil Court
Chennai.

2.The IX Asst. Judge,
City Civil Court, Chennai.

3.The XVI Asst. Judge,
City Civil Court, Chennai.

4. The Record Keeper
V.R.Section, High Court,Madras.

+1cc to Mr.P.B.Ramanujam, Advocate Sr 3175

VC (CO)
km/22.2.

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